

REMARKS

Claims 1-55, 56, 59-192 are pending in the application. Several claims have been withdrawn above at this stage of prosecution. Further, two dependent claims have been canceled and two new dependent claims have been added to the application in this Response C, such that no additional fee is believed to be required.

The multiplicity requirement raised in the November 8, 2005 Office Action is potentially unfair to Applicant, who has awaited examination for nearly four (4) years to secure consideration of 190 claims on the merits and who has paid substantial filing fees for such an examination. Accordingly, the multiplicity rejection should be withdrawn for the reasons that follow.

I. **RESTRICTION REQUIREMENT**

The November 8, 2005 Office Action stated, despite two previous restriction requirements by the Office restricting examination of Applicant's claims, that the above-captioned application contains claims directed to the following patentably distinct species of the claimed invention, and must therefore be divided:

| <u>Species of Fastening Member</u> | <u>as seen in Figure . . .</u> |
|------------------------------------|--------------------------------|
| 1 | 2 |
| 2 | 2A |
| 3 | 2B |
| 4 | 2C |

The November 8, 2005 Office Action required Applicant to elect a single disclosed species of a fastening member for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. The Office Action further stated that there were no generic claims, and subsequently requires Applicant to arbitrarily select thirty (30) claims and withdraw the rest (see below for more detail).

Traversal: Applicant respectfully traverses the statement made in the Office Action that there are no generic claims. Applicant submits that at least claims 1-19, 144, 160, 161, 169-174, 191 and 192 are generic to Figures 2, 2A, 2B, and 2C, of which claims 1, 144, and 160 independent.

Election of Species: To the extent the Office disagrees with Applicant's assertion that at least claims 1-19, 144, 160, 161, 169-174 and 191-192 are generic to each of the species of fastening member disclosed in the application, Applicant elects examination of the claims directed to the species disclosed in FIG. 2.

II. REJECTION OF CLAIMS UNDER 35 U.S.C. § 112 ARE TREATED

The November 8, 2005 Office Action raised an issue under 35 U.S.C. § 112, second paragraph, stating that the claims are indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. More specifically, the Office Action raised the issue that the claims are unduly multiplied. The Office Action required Applicant

to select no more than thirty (30) total claims, including no more than three (3) independent claims for purposes of examination on the merits.

The new requirement raised in the Office Action is potentially unfair to Applicant, who has awaited examination for nearly four (4) years after paying filing fees to secure consideration of 190 claims. Applicant is now being forced to limit examination to thirty (30) claims, by a Patent Office that will not refund the filing fees Applicant paid in good faith for examination of the other 160 claims that must be withdrawn if the Office does not reconsider its multiplicity rejection. Applicant respectfully requires the Patent Office to withdraw its multiplicity rejection, and proceed to examine the claims pending as of Applicant's Response B, which was previously accepted by the Office.

A. Applicant Respectfully Traverses the Multiplicity Rejection.

Applicant respectfully traverses the multiplicity rejection under 35 U.S.C. § 112, second paragraph because each of the claims do in fact have their own independent and unique basis for patentability, contrary to the contentions in the Office Action. Applicant respectfully submits that a substantial fee has been paid to have all of the claims rightfully examined on the merits. In addition to the substantial fee that has been paid for examination of all originally submitted claims, the Courts have provided clear direction that applicants should be allowed reasonable latitude in

stating their claims in regard to number and phraseology. *In re Flint*, 162 USPQ 228, 230 (CCPA 1969). Applicants have the right to select their own phraseology because each word in a claim is presumed to have different meaning and therefore a different scope, even if similar, which truly points out and defines their inventions and that right should not be abridged by the Office. See *id.*

The Court of Customs and Patent Appeals in *In re Flint, supra*, noted that mere opinion of the Office is insufficient to maintain a multiplicity rejection (emphasis added). *Id.* The Court further noted that a multiplicity rejection must be established based on a conclusion drawn from the facts and legal principles applied thereto, and require examples of substantial duplication or lack of material differentiation discussed in relation to the complexity of the invention and the alleged lack of differentiation in scope must be established by the Office. *Id.* In the instant case, the Office Action does not provide sufficient factual analysis, but instead states a broad, but not fully supported, opinion that the claims have been unduly multiplied.

Applicant responds by stating that each independent claim has a different scope than any other claim, and as such has the right to be examined on the merits. While Applicant does acknowledge that there are similarities in some of the independent claims, Applicants expressly assert that each independent claim has important differences with respect to each of the other independent

claims and as such each independent claim has a different scope than the other independent claims. Accordingly, each independent claim properly stands on its own and should be examined on the merits by the Office.

Applicant respectfully submits that the requirement to limit the number of claims to three (3) independent claims, and thirty (30) total claims, appears to be random and seems to be based on an incorrect opinion that some of the independent claims are redundant or repetitious. The rejection, therefore, must be withdrawn under the *In re Flint* case cited above. Therefore, Applicant respectfully requests the withdrawal of the § 112, second paragraph rejection, and submits that examination of all of the claims previously elected in Applicant's Response B should proceed.

B. Applicant Selects Thirty (30) Claims in the Alternative, and Requests a Telephone Interview Prior to Entry of Said Selection.

Should the Office disagree with Applicant's arguments provided above, Applicant hereby selects the following claims for examination on the merits, namely claims 1-19, 144, 160, 161, 169-174, 191 and 192. Additionally, Applicant respectfully requests a telephone interview with the Office prior to entry of the above selection.

In order to increase the chances of fairness to Applicant, the undersigned strongly asserts that the Office be willing to hear assertions by the undersigned in opposition to the multiplicity rejection. The undersigned is very concerned about the effect the

Office's several and different claim-reduction tactics have had on Applicant's patent rights.

IV. CONCLUSION AND AUTHORIZATION OF DEPOSIT ACCOUNT

In view of the foregoing, Applicant believes that all of Applicant's previously elected claims in Response B are allowable. Further, Applicant specifically asserts that claims 1-19, 144, 160, 161, 169-174, 191 and 192, which have been selected in the alternative to comply with the Office Action's requirement, are all allowable and the same is respectfully requested. If any impediment to the allowance of these claims remains after entry of this Response C, and such impediment could be alleviated during a telephone interview, the Examiner is invited to initiate the same.

The Commissioner is hereby authorized to charge any additional fee or to credit any overpayment in connection with this Response to Deposit Account No. 50-0836.

DATED this 8 day of December, 2005.

Respectfully submitted,



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